



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

NOTICE OF ALLOWANCE AND FEE(S) DUE

61263 7590 05/27/2009

PROSKAUER ROSE LLP
1001 PENNSYLVANIA AVE, N.W.,
SUITE 400 SOUTH
WASHINGTON, DC 20004

EXAMINER

WORLEY, CATHY KINGDON

ART UNIT

PAPER NUMBER

1638

DATE MAILED: 05/27/2009

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
-----------------	-------------	----------------------	---------------------	------------------

10/521,571

05/16/2005

James Langham Dale

23558-0017

4029

TITLE OF INVENTION: TABV TRANSCRIPTIONAL CONTROL ELEMENTS, CHIMERIC CONSTRUCTS AND USES THEREFOR

APPLN. TYPE	SMALL ENTITY	ISSUE FEE DUE	PUBLICATION FEE DUE	PREV. PAID ISSUE FEE	TOTAL FEE(S) DUE	DATE DUE
nonprovisional	YES	\$755	\$300	\$0	\$1055	08/27/2009

THE APPLICATION IDENTIFIED ABOVE HAS BEEN EXAMINED AND IS ALLOWED FOR ISSUANCE AS A PATENT. PROSECUTION ON THE MERITS IS CLOSED. THIS NOTICE OF ALLOWANCE IS NOT A GRANT OF PATENT RIGHTS. THIS APPLICATION IS SUBJECT TO WITHDRAWAL FROM ISSUE AT THE INITIATIVE OF THE OFFICE OR UPON PETITION BY THE APPLICANT. SEE 37 CFR 1.313 AND MPEP 1308.

THE ISSUE FEE AND PUBLICATION FEE (IF REQUIRED) MUST BE PAID WITHIN THREE MONTHS FROM THE MAILING DATE OF THIS NOTICE OR THIS APPLICATION SHALL BE REGARDED AS ABANDONED. THIS STATUTORY PERIOD CANNOT BE EXTENDED. SEE 35 U.S.C. 151. THE ISSUE FEE DUE INDICATED ABOVE DOES NOT REFLECT A CREDIT FOR ANY PREVIOUSLY PAID ISSUE FEE IN THIS APPLICATION. IF AN ISSUE FEE HAS PREVIOUSLY BEEN PAID IN THIS APPLICATION (AS SHOWN ABOVE), THE RETURN OF PART B OF THIS FORM WILL BE CONSIDERED A REQUEST TO REAPPLY THE PREVIOUSLY PAID ISSUE FEE TOWARD THE ISSUE FEE NOW DUE.

HOW TO REPLY TO THIS NOTICE:

I. Review the SMALL ENTITY status shown above.

If the SMALL ENTITY is shown as YES, verify your current SMALL ENTITY status:

A. If the status is the same, pay the TOTAL FEE(S) DUE shown above.

B. If the status above is to be removed, check box 5b on Part B - Fee(s) Transmittal and pay the PUBLICATION FEE (if required) and twice the amount of the ISSUE FEE shown above, or

If the SMALL ENTITY is shown as NO:

A. Pay TOTAL FEE(S) DUE shown above, or

B. If applicant claimed SMALL ENTITY status before, or is now claiming SMALL ENTITY status, check box 5a on Part B - Fee(s) Transmittal and pay the PUBLICATION FEE (if required) and 1/2 the ISSUE FEE shown above.

II. PART B - FEE(S) TRANSMITTAL, or its equivalent, must be completed and returned to the United States Patent and Trademark Office (USPTO) with your ISSUE FEE and PUBLICATION FEE (if required). If you are charging the fee(s) to your deposit account, section "4b" of Part B - Fee(s) Transmittal should be completed and an extra copy of the form should be submitted. If an equivalent of Part B is filed, a request to reapply a previously paid issue fee must be clearly made, and delays in processing may occur due to the difficulty in recognizing the paper as an equivalent of Part B.

III. All communications regarding this application must give the application number. Please direct all communications prior to issuance to Mail Stop ISSUE FEE unless advised to the contrary.

IMPORTANT REMINDER: Utility patents issuing on applications filed on or after Dec. 12, 1980 may require payment of maintenance fees. It is patentee's responsibility to ensure timely payment of maintenance fees when due.

PART B - FEE(S) TRANSMITTAL

**Complete and send this form, together with applicable fee(s), to: Mail Mail Stop ISSUE FEE
Commissioner for Patents
P.O. Box 1450
Alexandria, Virginia 22313-1450
or Fax (571)-273-2885**

INSTRUCTIONS: This form should be used for transmitting the ISSUE FEE and PUBLICATION FEE (if required). Blocks 1 through 5 should be completed where appropriate. All further correspondence including the Patent, advance orders and notification of maintenance fees will be mailed to the current correspondence address as indicated unless corrected below or directed otherwise in Block 1, by (a) specifying a new correspondence address; and/or (b) indicating a separate "FEE ADDRESS" for maintenance fee notifications.

CURRENT CORRESPONDENCE ADDRESS (Note: Use Block 1 for any change of address)

61263 7590 05/27/2009

PROSKAUER ROSE LLP
1001 PENNSYLVANIA AVE, N.W.,
SUITE 400 SOUTH
WASHINGTON, DC 20004

Note: A certificate of mailing can only be used for domestic mailings of the Fee(s) Transmittal. This certificate cannot be used for any other accompanying papers. Each additional paper, such as an assignment or formal drawing, must have its own certificate of mailing or transmission.

Certificate of Mailing or Transmission

I hereby certify that this Fee(s) Transmittal is being deposited with the United States Postal Service with sufficient postage for first class mail in an envelope addressed to the Mail Stop ISSUE FEE address above, or being facsimile transmitted to the USPTO (571) 273-2885, on the date indicated below.

(Depositor's name)
(Signature)
(Date)

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
-----------------	-------------	----------------------	---------------------	------------------

10/521,571 05/16/2005 James Langham Dale 23558-0017 4029

TITLE OF INVENTION: TABV TRANSCRIPTIONAL CONTROL ELEMENTS, CHIMERIC CONSTRUCTS AND USES THEREFOR

APPLN. TYPE	SMALL ENTITY	ISSUE FEE DUE	PUBLICATION FEE DUE	PREV. PAID ISSUE FEE	TOTAL FEE(S) DUE	DATE DUE
-------------	--------------	---------------	---------------------	----------------------	------------------	----------

nonprovisional YES \$755 \$300 \$0 \$1055 08/27/2009

EXAMINER	ART UNIT	CLASS-SUBCLASS
----------	----------	----------------

WORLEY, CATHY KINGDON 1638 536-024100

1. Change of correspondence address or indication of "Fee Address" (37 CFR 1.363).

- ☐ Change of correspondence address (or Change of Correspondence Address form PTO/SB/122) attached.
- ☐ "Fee Address" indication (or "Fee Address" Indication form PTO/SB/47; Rev 03-02 or more recent) attached. **Use of a Customer Number is required.**

2. For printing on the patent front page, list

- (1) the names of up to 3 registered patent attorneys or agents OR, alternatively, 1 _____
- (2) the name of a single firm (having as a member a registered attorney or agent) and the names of up to 2 registered patent attorneys or agents. If no name is listed, no name will be printed. 2 _____
- 3 _____

3. ASSIGNEE NAME AND RESIDENCE DATA TO BE PRINTED ON THE PATENT (print or type)

PLEASE NOTE: Unless an assignee is identified below, no assignee data will appear on the patent. If an assignee is identified below, the document has been filed for recordation as set forth in 37 CFR 3.11. Completion of this form is NOT a substitute for filing an assignment.

(A) NAME OF ASSIGNEE (B) RESIDENCE: (CITY and STATE OR COUNTRY)

Please check the appropriate assignee category or categories (will not be printed on the patent) : ☐ Individual ☐ Corporation or other private group entity ☐ Government

4a. The following fee(s) are submitted:

- ☐ Issue Fee
- ☐ Publication Fee (No small entity discount permitted)
- ☐ Advance Order - # of Copies _____

4b. Payment of Fee(s); (Please first reapply any previously paid issue fee shown above)

- ☐ A check is enclosed.
- ☐ Payment by credit card. Form PTO-2038 is attached.
- ☐ The Director is hereby authorized to charge the required fee(s), any deficiency, or credit any overpayment, to Deposit Account Number _____ (enclose an extra copy of this form).

5. Change in Entity Status (from status indicated above)

- ☐ a. Applicant claims SMALL ENTITY status. See 37 CFR 1.27. ☐ b. Applicant is no longer claiming SMALL ENTITY status. See 37 CFR 1.27(g)(2).

NOTE: The Issue Fee and Publication Fee (if required) will not be accepted from anyone other than the applicant; a registered attorney or agent; or the assignee or other party in interest as shown by the records of the United States Patent and Trademark Office.

Authorized Signature _____

Date _____

Typed or printed name _____

Registration No. _____

This collection of information is required by 37 CFR 1.311. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, Virginia 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, Virginia 22313-1450.

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
-----------------	-------------	----------------------	---------------------	------------------

10/521,571

05/16/2005

James Langham Dale

23558-0017

4029

61263

7590

05/27/2009

PROSKAUER ROSE LLP
1001 PENNSYLVANIA AVE, N.W.,
SUITE 400 SOUTH
WASHINGTON, DC 20004

EXAMINER

WORLEY, CATHY KINGDON

ART UNIT

PAPER NUMBER

1638

DATE MAILED: 05/27/2009

Determination of Patent Term Adjustment under 35 U.S.C. 154 (b) (application filed on or after May 29, 2000)

The Patent Term Adjustment to date is 91 day(s). If the issue fee is paid on the date that is three months after the mailing date of this notice and the patent issues on the Tuesday before the date that is 28 weeks (six and a half months) after the mailing date of this notice, the Patent Term Adjustment will be 91 day(s).

If a Continued Prosecution Application (CPA) was filed in the above-identified application, the filing date that determines Patent Term Adjustment is the filing date of the most recent CPA.

Applicant will be able to obtain more detailed information by accessing the Patent Application Information Retrieval (PAIR) WEB site (<http://pair.uspto.gov>).

Any questions regarding the Patent Term Extension or Adjustment determination should be directed to the Office of Patent Legal Administration at (571)-272-7702. Questions relating to issue and publication fee payments should be directed to the Customer Service Center of the Office of Patent Publication at 1-(888)-786-0101 or (571)-272-4200.

Notice of Allowability	Application No.	Applicant(s)	
	10/521,571	DALE ET AL.	
	Examiner	Art Unit	
	CATHY K. WORLEY	1638	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to amendment filed on Feb. 5, 2009.
2. ☒ The allowed claim(s) is/are 1, 71, 73-76, 87, 88, and 93-134; renumbered as claims 1-50, respectively.
3. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) ☐ All b) ☐ Some* c) ☐ None of the:
 1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

* Certified copies not received: _____.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.

THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.

4. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
5. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
 - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
 - 1) ☐ hereto or 2) ☐ to Paper No./Mail Date _____.
 - (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date _____.

Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
6. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

Attachment(s)

- | | |
|---|--|
| <ol style="list-style-type: none"> 1. <input type="checkbox"/> Notice of References Cited (PTO-892) 2. <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) 3. <input type="checkbox"/> Information Disclosure Statements (PTO/SB/08),
Paper No./Mail Date _____ 4. <input type="checkbox"/> Examiner's Comment Regarding Requirement for Deposit
of Biological Material | <ol style="list-style-type: none"> 5. <input type="checkbox"/> Notice of Informal Patent Application 6. <input type="checkbox"/> Interview Summary (PTO-413),
Paper No./Mail Date _____. 7. <input checked="" type="checkbox"/> Examiner's Amendment/Comment 8. <input type="checkbox"/> Examiner's Statement of Reasons for Allowance 9. <input type="checkbox"/> Other _____. |
|---|--|

/Cathy K. Worley/
Primary Examiner, Art Unit 1638

EXAMINER'S AMENDMENT

An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee.

Authorization for this examiner's amendment was given in a telephone interview with John P. Isacson on May 22, 2009.

The application has been amended as follows:

IN THE CLAIMS:

1. (Currently Amended) A promoter comprising an isolated DNA molecule having a fragment of SEQ ID NO:6 ~~nucleotide sequence~~ of at least 300 nucleotides or comprising an isolated DNA molecule having, ~~wherein the nucleotide sequence~~ ~~has~~ at least 95% sequence identity to the sequence set forth in SEQ ID NO:8 ~~or the nucleotide sequence hybridizes to the sequence set forth in SEQ ID NO:8 under high stringency conditions~~.

2-70. (Cancelled).

Art Unit: 1638

71. (Currently Amended) The promoter of claim 1, wherein the ~~nucleotide sequence~~ DNA molecule is as set forth in SEQ ID NO: 6 or 7 ~~is derived from a virus.~~

72. (Cancelled).

73. (Currently Amended) A monocotyledonous plant comprising ~~a nucleotide sequence according to claim 71, wherein a nucleic acid~~ the promoter of claim 1 operably linked to ~~the nucleotide sequence as set forth in SEQ ID NO: 6 or 7~~ a heterologous nucleic acid, wherein the heterologous nucleic acid is expressed constitutively in the monocotyledonous plant.

74. (Currently Amended) A non-graminaceous monocotyledonous plant comprising ~~a nucleotide sequence according to claim 71, wherein a nucleic acid~~ the promoter of claim 1 operably linked to ~~the nucleotide sequence as set forth in SEQ ID NO: 6 or 7~~ a heterologous nucleic acid, wherein the heterologous nucleic acid is expressed constitutively in the non-graminaceous monocotyledonous plant.

75. (Previously Presented) The non-graminaceous monocotyledonous plant of claim 74, wherein the non-graminaceous monocotyledonous plant is selected from the group consisting of *Musaceae*, taro, ginger, onions, garlic, pineapple, bromeliaeds, palms, orchids, lilies and irises.

Art Unit: 1638

76. (Previously Presented) The non-graminaceous monocotyledonous plant of claim 74, wherein the non-graminaceous monocotyledonous plant is taro.

77-86. (Cancelled)

87. (Currently Amended). A chimeric DNA construct comprising the ~~nucleotide sequence~~ promoter of claim 1, ~~as set forth in SEQ ID NO: 6 or 7,~~ operably linked to a heterologous DNA sequence to be transcribed.

88. (Currently Amended). The construct of claim 87, further comprising a 3' non-translated sequence that is operably linked to the heterologous DNA sequence that functions in plant cells to terminate transcription and/or to cause addition of a polyadenylated nucleotide sequence to the 3' end of a transcribed RNA sequence.

89-92. (Cancelled).

93. (Currently Amended). The construct of claim 87, wherein the heterologous DNA sequence to be transcribed encodes a structural or regulatory protein.

Art Unit: 1638

94. (Currently Amended) The construct of claim 87, wherein the heterologous DNA sequence to be transcribed encodes a transcript capable of modulating expression of a corresponding target gene.

95. (Previously Presented) The construct of claim 94, wherein the transcript comprises a transcribed region for downregulating expression of the corresponding target gene.

96. (Currently Amended) The construct of claim 94, wherein the transcript comprises a transcribed region comprising a molecule [[s]] selected from the group consisting of a sense suppression molecule, an antisense RNA, a ribozyme and an RNAi molecule.

97. (Previously Presented) The construct of claim 87, further comprising an enhancer element.

98. (Previously Presented) The construct of claim 87, further comprising a leader sequence which modulated mRNA stability.

99. (Currently Amended) The construct of claim 87, further comprising a nucleic acid sequence encoding a targeting sequence for targeting a protein product of the

Art Unit: 1638

heterologous DNA to be ~~transcribed~~ targeted to an intracellular compartment within plant cells or to an extracellular environment.

100. (Previously Presented) The construct of claim 87, further comprising a selectable marker gene.

101. (Previously Presented) The construct of claim 87, further comprising a screenable marker gene.

102. (Currently Amended) A host cell ~~transformed with a~~ comprising the chimeric DNA construct of claim 87, ~~wherein a nucleic acid operably linked to the promoter or biologically active fragment or variant is constitutively expressed in a host cell .~~

103. (Previously Presented) The host cell of claim 102, wherein the host cell is a plant cell.

104. (Previously Presented) The host cell of claim 102, wherein the host cell is a monocotyledonous plant cell.

105. (Previously Presented) The host cell of claim 102, wherein the host cell is a non-graminaceous monocotyledonous plant cell.

Art Unit: 1638

106. (Previously Presented. The host cell of claim 102, wherein the host cell is a non-graminaceous monocotyledonous plant cell selected from the group consisting of Musaceae, taro, ginger, onions, garlic, pineapple, bromeliads, palms, orchids, lilies, and irises.

107. (Currently Amended) The host cell of claim 102, wherein the cell is a graminaceous monocotyledonous plant cell.

108. (Currently Amended) The host cell of claim 102, wherein the cell is a dicotyledonous plant cell.

109. (Currently Amended) A method for gene expression in a plant, comprising introducing into a plant cell a chimeric DNA construct comprising ~~an isolated promoter or biologically active fragment thereof or variant of these, wherein the promoter is naturally located upstream of a transcribable DNA sequence which hybridizes to a nucleic acid probe derived from the polynucleotide sequence set forth in SEQ ID NO:1 under at least high stringency conditions, wherein the promoter or biologically active fragment or variant is operably linked to a foreign or endogenous DNA sequence to be transcribed~~ the promoter of claim 1 operably linked to a heterologous DNA sequence to be transcribed .

110. (Currently Amended) A method for producing transformed plant cells, comprising

(a) introducing into regenerable plant cells a chimeric DNA construct comprising ~~an isolated promoter or biologically active fragment thereof or variant of these, wherein the promoter is naturally located upstream of a transcribable DNA sequence which hybridizes to a nucleic acid probe derived from the polynucleotide sequence set forth in SEQ ID NO:1 under at least high stringency conditions, wherein the promoter or biologically active fragment or variant is operably linked to a foreign or endogenous DNA sequence to be transcribed~~ the promoter of claim 1 operably linked to a heterologous DNA sequence to be transcribed , so as to yield transformed plant cells; and

(b) identifying or selecting transformed plant cells.

111. (Currently Amended) A method for selecting stable genetic transformants from transformed plant cells comprising:

(a) introducing into regenerable plant cells a chimeric DNA construct comprising ~~an isolated promoter or biologically active fragment thereof or variant of these, wherein the promoter is naturally located upstream of a transcribable DNA sequence which hybridizes to a nucleic acid probe derived from the polynucleotide sequence set forth in SEQ ID NO:1 under at least high stringency conditions, wherein the promoter or biologically active fragment or variant is operably linked to~~

Art Unit: 1638

~~a foreign or endogenous DNA sequence to be transcribed~~ the promoter of claim 1
operably linked to a heterologous DNA sequence to be transcribed , so as to yield
transformed plant cells; and

(b) identifying or selecting a transformed plant cell line from said
transformed plant cells.

112. (Currently Amended) A method for producing a differentiated transgenic
plant, comprising:

(a) introducing into regenerable plant cells a chimeric DNA construct
comprising ~~an isolated promoter or biologically active fragment thereof or variant of~~
~~these, wherein the promoter is naturally located upstream of a transcribable DNA~~
~~sequence which hybridizes to a nucleic acid probe derived from the polynucleotide~~
~~sequence set forth in SEQ ID NO:1 under at least high stringency conditions,~~
~~wherein the promoter or biologically active fragment or variant is operably linked to~~
~~a foreign or endogenous DNA sequence to be transcribed~~ the promoter of claim 1
operably linked to a heterologous DNA sequence to be transcribed , so as to yield
regenerable transformed plant cells; and

(b) identifying or selecting a population of transformed plant cells;

And

(c) regenerating a differentiated transgenic plant from the population.

Art Unit: 1638

113. (Currently Amended) The method of claim [[s]] 109, wherein the cell [[s]] ~~are~~ is a dicotyledonous plant cell [[s]] .

114. (Currently Amended) The method of claim 109, wherein the cell [[s]] ~~are~~ is a monocotyledonous plant cell [[s]] .

115. (Currently Amended) The method of claim 109, wherein the cell [[s]] ~~are~~ is a graminaceous monocotyledonous plant cell [[s]] .

116. (Currently Amended) The method of claim 109, wherein the cell [[s]] ~~are~~ is a non-graminaceous monocotyledonous plant cell [[s]] .

117. (Currently Amended) The method of claim 109, wherein expression of the chimeric DNA construct in the transformed cell [[s]] imparts a phenotypic characteristic to the transformed cell [[s]] .

118. (Previously Presented) The method of claim 109, wherein the construct comprises a selectable marker gene.

119. (Previously Presented) The method of claim 109, wherein the construct comprises a screenable marker gene.

120. (Currently Amended) The method of claim 112, wherein expression of the chimeric DNA construct renders the differentiated transgenic plant identifiable over ~~the~~ a corresponding non-transgenic plant.

121. (Previously Presented) The method of claim 112, further comprising obtaining progeny from the differentiated transgenic plant.

122. (Currently Amended) Progeny obtained by the method of claim 121 , wherein said progeny comprise said promoter and operably linked heterologous DNA sequence .

123. (Currently Amended) A plant part of the differentiated transgenic plant obtained from the method of claim 112, wherein the plant part contains the promoter and operably linked heterologous DNA sequence ~~chimeric construct~~ .

124. (Previously Presented) A differentiated transgenic plant regenerated from transformed plant cells obtained by the method of claim 110.

125. (Currently Amended) A transformed plant cell containing a chimeric DNA construct comprising ~~an isolated promoter or biologically active fragment thereof or~~

Art Unit: 1638

~~variant of these, wherein the promoter is naturally located upstream of a transcribable DNA sequence which hybridizes to a nucleic acid probe derived from the polynucleotide sequence set forth in SEQ ID NO:1 under at least high stringency conditions, wherein the promoter or biologically active fragment or variant is operably linked to a foreign or endogenous DNA sequence to be transcribed~~ the promoter of claim 1 operably linked to a heterologous DNA sequence to be transcribed; wherein the heterologous DNA is constitutively expressed .

126. (Currently Amended) A differentiated transgenic plant comprising plant cells containing containing a chimeric DNA construct comprising ~~an isolated promoter or biologically active fragment thereof or variant of these, wherein the promoter is naturally located upstream of a transcribable DNA sequence which hybridizes to a nucleic acid probe derived from the polynucleotide sequence set forth in SEQ ID NO:1 under at least high stringency conditions, wherein the promoter or biologically active fragment or variant is operably linked to a foreign or endogenous DNA sequence to be transcribed~~ the promoter of claim 1 operably linked to a heterologous DNA sequence to be transcribed .

127. (Previously Presented) The transgenic plant of claim 126, wherein the plant is a dicotyledonous plant.

Art Unit: 1638

128. (Previously Presented) The transgenic plant of claim 126, wherein the plant is a monocotyledonous plant.

129. (Previously Presented) The transgenic plant of claim 126, wherein the plant is a graminaceous monocotyledonous plant.

130. (Previously Presented) The transgenic plant of claim 126, wherein the plant is a non-graminaceous monocotyledonous plant.

131. (Previously Presented) The transgenic plant of claim 126, wherein the construct comprises a selectable marker gene.

132. (Previously Presented) The transgenic plant of claim 126, wherein the construct comprises a screenable marker gene.

133. (Previously Presented) The transgenic plant of claim 126, wherein the expression of the chimeric DNA construct renders the differentiated transgenic plant identifiable over the corresponding non-transgenic plant.

134. (Currently amended) A method of using of a chimeric DNA construct comprising an isolated plant promoter or biologically active fragment thereof or variant of these, wherein said promoter is naturally located upstream of a transcribable DNA sequence which hybridizes to a nucleic acid probe derived from the polynucleotide sequence set forth in SEQ ID NO:1 under at least high stringency conditions, wherein said promoter or biologically active fragment or variant is operably linked to a foreign or endogenous DNA sequence to be in the production of a transformed plant cell, plant or plant part ; said method

Art Unit: 1638

comprising introducing into a plant cell the promoter of claim 1 operably linked to a heterologous DNA sequence to be transcribed.

135-138. (Cancelled).

Allowable Subject Matter

Claims 1,71, 73-76, 87, 88, and 93-134 are allowed and are renumbered as claims 1-50, respectively.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to CATHY K. WORLEY whose telephone number is (571)272-8784. The examiner can normally be reached on M-F 10:00 - 4:00, with additional variable hours before 10:00 and after 4:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anne Marie Grunberg can be reached on (571) 272-0975. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Cathy K. Worley/

Primary Examiner, Art Unit 1638